

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, SEPTEMBER 21, 2004

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room 600, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Gregory. (Excused)

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room 600, (A) to confer with Legal Counsel to discuss existing litigation pursuant to Government Code Section 54956.9; subsection (a) considering the case(s) of: (1) Sharp, et al. v. City of San José, et al.; (B) to confer with Legal Counsel to discuss anticipated litigation pursuant to: (1) subsection (b) of Section 54956.9 of the Government Code in one (1) matter of significant exposure; (2) subsection (c) of Section 54956.9 of the Government Code in three (3) matters pertaining to initiation of litigation. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Municipal Employees Federation; (4) Confidential Employees Organization; (5) City Association of Management Personnel; (6) Association of Maintenance Supervisory Personnel; (7) Operating Engineers, Local 3; (8) International Brotherhood of Electrical Workers; (9) Association of Building and Mechanical and Electrical Inspectors; (10) Association of Engineers and Architects; (11) International Federation of Professional and Technical Employees, Local 21.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:01 a.m. and reconvened at 1:37 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Gregory. (Excused)

INVOCATION

Ellen Grace O'Brien, Senior Minister and Spiritual Director of the Center for Spiritual Enlightenment recited a prayer for peace. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved, with Item 5.4 deferred to October 5, 2004, as amended at the request of Council Member Chavez. (10-0-1. Absent: Gregory.)

Vic Nakamoto spoke in opposition of the deferral of Item 5.4 to 10/5/04.

CEREMONIAL ITEMS

1.1 Presentation of a proclamation recognizing September 21, 2004 as the International Day of Peace in the City of San José. (Cortese/Mayor)

Action: Mayor Gonzales and Council Member Cortese recognized September 21, 2004 as the “International Day of Peace” in the City of San José. Mayor Gonzales presented a plaque to Reverend Ellen Grace O’Brien.

1.2 Presentation to Mayor and Council of the Charles Edson Tax Credit of Excellence Award for Affordable Housing. (Housing)

Action: Mayor Gonzales invited Director of Housing Leslye Corsiglia, David Neale, President of CORE Development, Martha Putnam, and Christy Hamley, CORE Development, and Barry del Buono, Executive Director of Emergency Housing Consortium, to the podium. Director Corsiglia presented the Charles Edson Tax Credit of Excellence Award for Affordable Housing to Mayor Gonzales and the City Council.

1.3 Appointment and swearing in of District 8 Youth Commissioner. (Mayor) (Deferred from 9/7/04 – Item 1.1)

Action: Deferred to October 19, 2004. To be heard in the evening.

1.5 Presentation of APWA Project Management Innovation Award. (Public Works) (Rules Committee referral 9/15/04)

Action: Mayor Gonzales invited Director of Public Works Katy Allen, and Taghi Saadati, Vice President of the Local Chapter of the American Public Works Association, to the podium. Mr. Saadati presented the APWA Project Management Innovation Award to Mayor Gonzales and the City Council.

CEREMONIAL ITEMS (Cont'd.)

- ** Action: Mayor Gonzales and Council Member LeZotte invited Library Director Jane Light, to the podium. Mayor Gonzales presented the prestigious League of California Cities Helen Putnam Award for Excellence 2004, to Director Light for the Martin Luther King Library. The City of San José was honored for its leadership in interregional cooperation.

CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Council Member Reed and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Gregory.)

2.2 Final adoption of ordinances.

- (1) **ORD. NO. 27244** - Prezones certain real property situated on the west side of North Capital Avenue, opposite Penitencia Creek Road, from Unincorporated County to A(PD) Planned Development Zoning District on 5.1 acres (Lands of Yoneda); from Unincorporated County to R-M Multi-Family Residence District on 4.2 acres (Lands of Yoneda); and from Unincorporated County to R-M Multi-Family Residence District on 0.46 acre (Lands of Chelstowski).

Documents Filed: Proof of Publication of the title of Ordinance No. 27244 executed on September 14, 2004, submitted by the City Clerk.

Public Comment: William Garbett, and Dale Warner spoke in opposition to the ordinance.

Action: Upon motion by Vice Mayor, seconded by Council Member Chavez, and carried unanimously, Ordinance No. 27244 was adopted. (10-0-1. Absent: Gregory.)

- (2) **ORD. NO. 27245** - Prezones certain real property situated at the northwest corner of Story Road and Lyndale Avenue to A(PD) Planned Development Zoning District. PDC 04-022

Documents Filed: Proof of Publication of the title of Ordinance No. 27245 executed on September 14, 2004, submitted by the City Clerk.

Action: Ordinance No. 27245 was adopted. (10-0-1. Absent: Gregory.)

- 2.3 Adoption of a resolution authorizing the reorganization of territory designated as Cambrian No. 33, which involves the annexation to the City of San José of 0.44 acre of land, located on the north side of Curtner Avenue, opposite the terminus of Joseph Avenue and adjacent to the City of San José annexations Cambrian Nos. 30A and 31, and the detachment of the same from West Valley Sanitation, County Lighting County Service, Central Fire Protection, and Area No 01 (Library Services) County Service. CEQA: Resolution No. 65459, C03-092. Council District 9. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated August 30, 2004, recommending adoption of the resolution. (2) Memorandum from Police Chief Robert Davis, dated September 8, 2004, recommending adoption of the resolution.

Action: Resolution No. 72316, entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Cambrian No. 33 Subject to Liability for General Indebtedness of the City", was adopted. (10-0-1. Absent: Gregory.)

- 2.4 (a) Adoption of a resolution initiating proceedings and setting October 5, 2004 at 1:30 p.m. for Council consideration on the reorganization of territory designated as Hillview No. 72, which involves the annexation to the City of San José of 0.18 acre of land more or less, located at the northwest corner of Story Road and Lyndale Avenue and adjacent to the City of San José annexations Hillview Nos. 11 and 62, and the detachment of the same from Central Fire Protection, Area No. 01 (Library Services) County Services, County Lighting County Services and County Sanitation District 2-3. CEQA: Mitigated Negative Declaration, PDC04-022. Council District 5. (Planning, Building and Code Enforcement)**
- (b) Adoption of a resolution initiating proceedings and setting October 5, 2004 at 1:30 p.m. for Council consideration on the reorganization of territory designated as McKee No. 126, which involves the annexation to the City of San José of 15.32 acres of land more or less, located at the west side of North Capitol Avenue, opposite Penitencia Creek Road and adjacent to the City of San José annexations McKee Nos. 12, 54, and 98, and Berryessa No. 65, and the detachment of the same from Central Fire Protection and Area No. 01 (Library Services) County Services. CEQA: Mitigated Negative Declaration, PDC04-017. Council District 4. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memoranda from Director of Planning, Building and Code Enforcement Stephen Haase, both dated August 30, 2004, recommending adoption of the resolutions. (2) Memorandum from Director of Public Works Katy Allen, and Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated September 8, 2004, recommending adoption of the resolution.

2.4 (Cont'd.)

Action: Resolution No. 72317, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Hillview No. 72 and Described Herein, and Setting the Date, Time and Place for Consideration of Such Reorganization", and Resolution 72318, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as McKee No. 126 and Described Herein, and Setting the Date, Time and Place for Consideration of Such Reorganization", were adopted. (10-0-1. Absent: Gregory.)

2.5 **Approval of a continuation agreement with Group 4 Architecture, Research + Planning, Inc. for architecture consultant services for the Berryessa Branch Library, extending the term of the agreement to June 30, 2005, and increasing the amount of compensation by \$15,000, for a total agreement amount not to exceed \$1,010,235. CEQA: Mitigated Negative Declaration, H02-02-007. Council District 4. (Public Works)**

Action: Deferred to September 28, 2004.

2.6 **Approval of a third amendment to the consultant agreement with RossDrulisCusenbery Architecture, Inc. for programming and conceptual design services for the Police Southside Substation, extending the term of the agreement from September 24, 2004 to March 31, 2005, at no additional cost to the City. CEQA: Not a Project. Council District 2. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, and Police Chief Robert Davis, dated September 8, 2004, recommending approval of the third amendment.

Action: Upon motion by Council Member Williams, seconded by Council Member Reed, and carried unanimously, the third amendment to the consultant agreement was approved. (10-0-1. Absent: Gregory.)

2.7 **Approval of an ordinance amending Section 2.08.150 of the San José Municipal Code changing the regular maximum terms of commissioners on non-charter commissions from one full four-year terms to two full three-year terms, and allowing for an appointment to up to one additional three-year term in certain circumstances. (City Clerk)**

Action: Renumbered from 3.4. Deferred to September 28, 2004.

- 2.8 (a) **Adoption of appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for the Opera San José at (Fox) California Theatre Project (PSM 207#3) and Keyes Street Sidewalk Reconstruction Project (PSM 383) with a net impact to the fund of \$130,500.**
- (b) **Adoption of a resolution making certain determinations regarding the related expenditures of Redevelopment Agency funds on certain public improvements in connection with the Keyes Street Sidewalk Reconstruction Project, as more specifically described in the memorandum from the Redevelopment Agency, dated July 7, 2004.**

CEQA: Not a Project. Council District 3. SNI: Market Gateway and Spartan/Keyes. (City Manager's Office)

(Rules Committee referral 9/15/04.)

Documents Filed: (1) Memorandum from Budget Director Larry Lisenbee, dated September 8, 2004, recommending adoption of the appropriation ordinance and funding sources resolution amendments. (2) Memorandum from Director of Transportation James Helmer, dated September 14, 2004, recommending approval of the first amendment to the cooperative agreement.

Action: Ordinance No. 27248, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Moneys in the Services for Redevelopment Capital Projects Fund for the Opera San José at (Fox) California Theatre and the Keyes Street Sidewalk Reconstruction Projects; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption; Resolution No. 72319, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund; and Resolution No. 72320, entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Spartan/Keyes Neighborhood in the Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. (10-0-1. Absent: Gregory.)

- 2.9 **Adoption of a resolution accepting invitations from David W. Packard on behalf of the City of San José and the Redevelopment Agency for a performance of the Opera San José on September 26, 2004, and approving the distribution of invitations to staff of the City and Agency in their official capacity as representative of the City of San José and Redevelopment Agency. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated September 16, 2004, recommending adoption of the resolution.

Action: Resolution No. 72321, entitled: "A Resolution of the Council of the City of San José Accepting Invitations from David W. Packard for a Performance of the Opera San José on September 26, 2004, and Approving the Distribution of Invitations to Officials and Staff of the City of San José and the San José Redevelopment Agency in their Official Capacity as Representatives of the City of San José and Redevelopment Agency", was adopted. (10-0-1. Absent: Gregory.)

- 2.10 Approval of Independent Police Auditor Teresa Guerrero-Daley's travel to Portland, Oregon and Chicago, Illinois on September 22 through September 24, 2004, and October 17 through October 24, 2004, to attend a Second Annual Conference for Police Auditors and the National Association of Civilian Oversight of Law Enforcement. Funding: University of Nebraska Grant/Personal funds. (Independent Police Auditor)
(Rules Committee referral 9/15/04)**

Documents Filed: Memorandum from Independent Police Auditor Teresa Guerrero-Daley, dated September 9, 2004, requesting approval of a travel request.

Action: The travel was approved. (10-0-1. Absent: Gregory.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – September 8, 2004 Vice Mayor Dando, Chair

Documents Filed: The Rules Committee Reports dated September 8, and September 15, 2004.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review September 21, 2004 Draft Agenda.

The Committee recommended approval of the September 21, 2004 City Council agenda with four additions.

- (2) Add New Items to September 14, 2004 Amended Agenda

The Committee recommended approval of two additions to the September 14, 2004 Amended Agenda.

- (3) List of Reports Outstanding. Attachment: Report from the City Manager dated September 7, 2004, listing no reports outstanding for September 14, 2004.

The Committee noted and filed the City Manager's report.

3.2 Report of the Rules Committee – September 8, 2004 (Cont'd.)
Vice Mayor Dando, Chair

(c) Legislative Update

(1) State

(a) Approval of the 2004 League of California Cities Resolutions

This item was reported on at the September 14, 2004 City Council Meeting, Item 3.2(c)(1)(2).

(2) Federal - There was no report.

(d) Meeting Schedules

(1) Approval of the Redevelopment Agency Budget Schedule

This item was reported on at the September 14, 2004 City Council Meeting, Item 3.2(d)(1).

(e) The Public Record - The Committee noted and filed the Public Records.

(f) Appointment to Boards, Commissions and Committees

(1) Recruitment for Youth Commission districts 4, 7, and 9. Attachment: Notice of Vacancy, dated September 1, 2004.

The Committee noted and filed the Notice of Vacancy.

(g) Rules Committee Reviews, Recommendations and Approvals

(1) Proposal for a Hotline in the City Auditor's Office. Attachment: Memorandum from City Auditor Gerald Silva, dated August 31, 2004, transmitting proposal.

The Committee accepted the report, with Staff directed to: (1) Determine how many of the Top 10 Cities in the United States have a fraud hotline and which department or office manages/ maintains the operation; (2) Coordinate protocol, guidelines and procedures with the City Auditor, City Attorney, Employee Relations, and Independent Police Auditor, and report back to the Rules Committee in 30 days.

(h) Oral communications - None were presented.

(i) Adjournment - The meeting was adjourned at 2:48 p.m.

**3.2 Report of the Rules Committee – September 15, 2004 (Cont'd.)
Vice Mayor Dando, Chair**

(c) Legislative Update

(1) State

- (a) Propositions 1A and 65 on the November State Ballot. Attachment: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated September 10, 2004, transmitting recommended support positions.

The Committee recommended support of Proposition 1A and opposition of Proposition 65.

Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried unanimously, the Reports of Rules Committee, and the actions of September 8, and September 15, were accepted. (10-0-1. Absent: Gregory.)

3.4 Approval of an ordinance amending Section 2.08.150 of the San José Municipal Code changing the regular maximum terms of commissioners on non-charter commissions from one full four-year terms to two full three-year terms, and allowing for an appointment to up to one additional three-year term in certain circumstances. (City Clerk)

Action: Renumbered to 2.7. Deferred to September 28, 2004.

**3.5 Adoption of a resolution nominating a portion of the Market Almaden SNI Area for designation as a Conservation Area and directing the Department of Planning, Building and Code Enforcement to initiate the required process and proceedings to establish the Conservation Area, including a necessary outreach to community members and property owners. (Chavez)
(Rules Committee referral 9/15/04)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated September 10, 2004, recommending adoption of the resolution.

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, Resolution No. 72322, entitled: “A Resolution of the Council of the City of San José Nominating a Portion of the Market Almaden Strong Neighborhoods Initiative Area for Designation as a Conservation Area and Directing the Department of Planning, Building and Code Enforcement to Initiate the Required Process and Proceedings to Establish the Conservation Area”, was adopted, with Direction to the City Attorney to draft an amendment to the Municipal Code to transfer the authority and responsibilities of the Director of General Services with regard to purchasing to the Director of Finance. (10-0-1. Absent: Gregory.)

3.6 Direction to the City Attorney to draft an amendment to the Municipal Code to transfer the authority and responsibilities of the Director of General Services with regard to purchasing to the Director of Finance. (City Manager's Office) (Rules Committee referral 9/15/04)

Documents Filed: Memorandum from City Manager Del Borgsdorf, dated September 15, 2004, recommending drafting an amendment to the Municipal Code.

Public Comment: William Garbett spoke in opposition to the issue.

Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and carried unanimously, the City Attorney was directed to draft an amendment to the Municipal Code transferring authority and responsibilities of the Director of General Services in regard to purchasing to the Director of Finance. (10-0-1. Absent: Gregory.)

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.3 Final hearing and approval of the 2003-04 Consolidated Annual Performance Evaluation Report (CAPER). CEQA: Not a Project. (Housing/Parks, Recreation and Neighborhood Services)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, recommending approval of the report. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia, dated September 8, 2004, transmitting the draft report. (3) Proof of publication of Notice of Public Hearing, executed on August 31, 2004, submitted by the City Clerk.

Action: Upon motion by Council Member Williams, seconded by Council Member Cortese, and carried unanimously, the report was approved. (10-0-1. Absent: Gregory.)

4.5 Reports on bids and award of contract for the Towers Lane Improvement Project (north of Aborn Road) to the low bidder, DeSilva Gates Construction, LP, in the amount of \$626,191, and approval of a 15 percent contingency in the amount of \$94,000. CEQA: Exempt, PP 02-03-046. Council District 7. SNI: West Evergreen. (Public Works/Transportation) (Deferred from 8/31/04 – Item 4.3, et al, and 9/14//04 – Item 4.4)

Action: Deferred to October 5, 2004.

RECREATION & CULTURAL SERVICES

5.1 Report of the All Children Achieve Committee – September 9, 2004 Council Member Yeager, Chair

Documents Filed: The All Children Achieve Committee Report dated September 9, 2004.

- (a) Status Report on Implementation of Parks, Recreation and Neighborhood Services Multi-Service Delivery “Hub” Model. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated August 26, 2004, transmitting the report.

The Committee accepted the report.

- (b) Report on San José BEST Allocation Process. Update on San José BEST Eligible Service Providers. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated August 26, 2004, transmitting the report.

The Committee accepted the report.

- (c) Youth Commission Workplan Update. Police Department’s Youth Advisory Council. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated August 26, 2004, transmitting the report.

The Committee accepted the report.

- (d) Report on San José After School Implementation -

Deferred to October 14, 2004.

- (e) Oral petitions - There were none.

- (f) Adjournment - The meeting was adjourned at 3:05 p.m.

Action: Upon motion by Council Member Yeager, seconded by Council Member Chavez, and carried unanimously, the Report of the All Children Achieve Committee and the Actions of September 9, 2004, were approved. (10-0-1. Absent: Gregory.)

- 5.2 (a) **Approval of a funding agreement to allow the contribution of up to \$2,000,000 in funds from the County of Santa Clara (County) for the acquisition of any properties associated with the Willow Glen Spur Trail Project.**
- (b) **Adoption of a resolution authorizing the City Manager to negotiate and execute a funding agreement to accept \$1,000,000 from the Open Space Authority (OSA) for the acquisition of any properties associated with the Willow Glen Spur Trail Project.**
- CEQA: Exempt, PP02-12-370. Council District 6. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated September 14, 2004, recommending approval of the funding agreement, and adoption of the resolution.

Action: Upon motion by Council Member Yeager, seconded by Vice Mayor Dando, and carried unanimously, the funding agreement was approved, and Resolution No. 72323, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Funding Agreement to Accept \$1,000,000 from the Open Space Authority for the Acquisition of Any Properties Associated with the Willow Glen Spur Trail Project", was adopted. (10-0-1. Absent: Gregory.)

- 5.4 **As recommended by the Parks and Recreation Commission, re-name the Northside Community Center located near the intersection of 6th Street and Empire Street to the Jacinto "Tony" Sequig Northside Community Center. (Parks and Recreation Commission/City Clerk)**
- (Rules Committee referral 9/15/04)**

Action: Deferred to October 5, 2004, per Orders of the Day. To be heard in the evening.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **Public Hearing on the application of Sonrise Consolidated Inc. for a Commercial Solid Waste and Recyclables Collection Franchise, and consider approval of an ordinance granting the franchise, and approval of a Commercial Solid Waste and Recyclables Collection Franchise Agreement with Sonrise Consolidated Inc. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services Carl Mosher, dated September 9, 2004, recommending approval of the ordinance. (2) Proof of publication of Notice of Public Hearing, executed on September 10, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing and there was no testimony from the floor. Mayor Gonzales closed the public hearing.

7.1 (Cont'd.)

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, Ordinance No. 27249, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Sonrise Consolidated Inc.", was passed for publication. (10-0-1. Absent: Gregory.)

- 7.2
- (a) **Accept the Status Report on cooperative efforts between the City of San José and the Santa Clara Valley Water District.**
 - (b) **Reaffirm the City's interest in continuing to explore opportunities for expansion of the reuse of recycled water countywide through continued participation in the South Bay Water Recycling Collaborative Effort.**
 - (c) **Adopt a resolution authorizing the City Manager to negotiate and execute the Trash Prevention and Removal Memorandum of Agreement between the City of San José and the Santa Clara Valley Water District.**
 - (d) **Reaffirm the City's commitment to continued participation in the Water Resources Protection Collaborative.**

CEQA: (a) and (d) Not a Project; (b) Exempt, PP04-249 and (c) Exempt, PP04-0248. (Environmental Services/Public Works/Parks, Recreation and Neighborhood Services/Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Environmental Services Carl Mosher, Director of Public Works Katy Allen, Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Director of Planning, Building and Code Enforcement Stephen Haase, dated September 9, 2004, recommending as described above.

Action: Upon motion by Council Member Williams, seconded by Council Member Reed, and carried unanimously, the status report was accepted, the City's commitments were affirmed, and Resolution No. 72324, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Memorandum of Agreement with the Santa Clara Water District for Trash Prevention and Removal, was adopted. (10-0-1. Absent: Gregory.)

- 7.3
- (a) **Accept the staff report regarding Norcal Waste Systems of San José, Inc's request for an amendment to the Recycle Plus Integrated Waste Management Services agreement. (City Manager's Office)**
 - (b) **Adoption of a resolution authorizing the City Manager and City Attorney to negotiate and authorizing the City Manager to execute an amendment to the agreement between the City and Norcal Waste Systems of San José, Inc. for Recycle Plus Integrated Waste Management Services to include payment for additional labor costs, contribution to a recycle characterization study, an e-scrap collection and processing program, and bins for 10 additional neighborhood cleanups. (Mayor's Office)**

(Deferred from 9/7/04 – Item 7.1 and 9/14/04 – Item 7.2)

7.3 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Gonzales, Vice Mayor Dando, and Council Member Chavez, dated September 16, 2004, recommending adoption of the resolution, and acceptance of the Staff Report, including agreement with Norcal. (2) Memorandum from Council Member LeZotte, and Council Member Reed, recommending Norcal's request for an amendment be rejected. (3) Memorandum from Deputy City Manager Jim Holgersson, dated September 16, 2004, recommending acceptance of the Staff Report and agreement with Norcal.

Public Comment: Mark Arsenault, Waste Management, William Garbett, and Ross Signorino expressed opposition to the issue. Robert Morales, Teamsters Union, and Philip Bump, South Bay AFL-CIO Labor Council spoke in favor of the issue.

Motion: Council Member Chavez moved approval of the memorandum she cosigned with Mayor Gonzales, and Vice Mayor Dando, dated September 16, 2004. Council Member Yeager seconded the motion.

Discussion: A short discussion among the Council Members ensued.

Council Member Reed expressed opposition to the agreement with Norcal, adding he believed this was known early on by Norcal and others.

Council Member Chirco stated she looks forward to clearer direction from Staff and what the consequences will be. Council Member Yeager asked for Staff to return to Council for approval of the final agreement.

Council Member Cortese remarked that he would require more information first before he can be supportive of the issue. Council Member also LeZotte expressed opposition to the issue, stating she is not comfortable protecting Norcal's profits.

Action: On a call for the question, the motion carried, and the memorandum from Mayor Gonzales, Vice Mayor Dando, and Council Member Chavez, dated September 16, 2004 and the Staff Report were accepted, Resolution No. 72325, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager and the City Attorney to Negotiate an Amendment to the Agreement Between the City of San José and Norcal Waste Systems of San José, Inc. for Recycle Plus Integrated Waste Management Services and Authorizing the City Manager to Execute the Amendment", was adopted, with City Attorney and City Manager directed to negotiate the agreement and return to Council for approval of the final agreement. (7-3-1-0. Noes: Cortese, LeZotte, Reed. Absent: Gregory.)

AVIATION SERVICES

- 8.1 Approval of the ninth amendment to the consultant agreement with PB Aviation, Inc. for consulting services for the Airport Master Plan, increasing the compensation by \$11,126,000, from \$48,840,000, for a total agreement amount not to exceed \$59,966,000, and extending the term of the agreement from December 1, 2005 to July 1, 2006. CEQA: Resolution Nos. 67380 and 71451, PP 04-08-243. (Airport/Public Works)**

Action: Deferred to October 5, 2004.

- 8.2 Adoption of a resolution authorizing the City Manager to negotiate and execute the third amendment to the agreement with M. Arthur Gensler, Jr. & Associates (Gensler) for master architectural services, increasing compensation by \$13,590,363, from \$25,060,000, for a total agreement amount not to exceed \$38,650,363, and extending the term of the agreement from December 1, 2005 to December 1, 2008. CEQA: Resolution Nos. 67380 and 71451, PP 04-08-241. (Airport/Public Works)**

Action: Deferred to October 5, 2004.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board was convened at 3:41 p.m. to consider Item 10.1 in a Joint Session.

- 10.1 Acceptance of the quarterly report on the Citywide Capital Improvement Program (CIP), including park, library, public safety bond projects, and Strong Neighborhoods Initiative (SNI) Projects. CEQA: Not a Project. (City Manager's Office/Redevelopment Agency)**

Documents Filed: Quarterly Status Report on the Citywide Capital Improvement Program and Strong Neighborhoods Initiative Projects, dated September 21, 2004.

Discussion: Deputy City Manager Terry Roberts presented the quarterly status report of the Citywide Capital Improvement Program.

Action: Upon motion by Council Member Williams, seconded by Council Member Reed, and carried unanimously, the Status Report was accepted. (10-0-1. Absent: Gregory.)

The Redevelopment Agency Board portion was adjourned at 3:57 p.m.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

None.

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

None.

OPEN FORUM

- (1) Ross Signorino spoke of retaining a baseball team in San José.
- (2) Brian Schmidt spoke of concerns regarding Coyote Valley.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:01 p.m.

RECESS/RECONVENE

The City Council recessed at 4:01 p.m. from the afternoon session of the City Council Meeting, and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Gregory. (Excused)

CERMONIAL ITEMS

1.4 Presentation of a commendation to honor the United States Army Reserve 341st Military Police Company. (Mayor)

Action: Mayor Gonzales and Vice Mayor Dando invited Sergeant Frank Keffer, Jr. to the podium to recognize and honor the United States Army Reserve 341st Military Police Company for their service to America during their one year deployment in Iraq. Sergeant Keffer, Jr. presented his Company's flag to Mayor Gonzales and the City Council. Mayor Gonzales presented a commendation to Sergeant Keffer, Jr. on behalf of the 341st Military Police Company.

RECREATION & CULTURAL SERVICES

- 5.3 (a) As recommended by the parks and Recreation Commission, name a new park located at the intersection of Sixth and Bestor Streets as "Bestor Art Park."**
- (b) As recommended by the parks and Recreation Commission, name a new park located at the intersection of Floyd and Locust Streets as "Parque de Padre Mateo Sheedy."**
- (Parks and Recreation Commission/City Clerk)**

Documents Filed: (1) Memoranda from City Clerk Lee Price, both dated September 8, 2004, recommending the above described name changes.

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the new parks "Bestor Art Park", and "Parque de Padre Mateo Sheedy", were approved. (10-0-1. Absent: Gregory.)

PUBLIC HEARINGS

Assistant City Clerk Nancy Alford read the requests for continuance of the applications. Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, the below noted continuances were granted. (10-0-1. Absent: Gregory.)

- 11.1 Public Hearing on appeal of the Planning Commission's decision to approve a Conditional Use Permit in conjunction with an Alcohol Beverage Control Exception to allow for the off-sale of alcoholic beverages at a grocery store on a 9.5 gross acre site in the CG General Commercial Zoning District, located at the northeast corner of Jackson Road and McKee Road (2327 McKee Road). (Chavez Super Market, Developer/Chi Chiu Lo Trust, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends upholding the Planning Commission's decision to approve the CUP. (6-0-1).
CP 04-046 - District 5**

Documents Filed: None.

Action: Continued to October 5, 2004.

- 11.3 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located at the south side of State Street, approximately 300 feet easterly of Pacific Avenue, from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 6 single-family detached residences on a 0.41 gross acre site. (Next Step Homes, LLC, Owner/ Developer). CEQA: Mitigated Negative Declaration.
PDC 03-104 - District 4
(Continued from 9/7/04 – Item 11.3)**

Documents Filed: None.

Action: Continued to October 5, 2004.

- 11.4 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located at the southwest corner of McKee Road and North Jackson Avenue, from A Agriculture, CG Commercial General, CO Commercial Office, A(PD) Planned Development, and R-2 Two Family Residence Districts to A(PD) Planned Development Zoning District, to allow approximately 1,030,000 square feet of medical facility uses on a 34.2 gross acre site. (San José Healthcare System, LP, Owner). CEQA: Pending.
PDC 03-093 - District 5**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on July 28, 2004, submitted by the City Clerk.

Action: Dropped. See Items 12.1(a)(1) and 12.1(a)(2).

- 11.7 Public Hearing on and consider approval of an ordinance on Conforming Prezoning of the property located at the north side of Madeline Drive, approximately 200 feet easterly of White Road (3361 Madeline Drive), from County to R-1-8 Residential Zoning District, to allow residential uses on a 0.13 gross acre site. (Gilbert E and Diane M Carpio, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
C 04-049 - District 5

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File C04-049, dated September 21, 2004, recommending approval on the Conforming Prezoning. (2) Proof of Publication of Notice of Public Hearing, executed on September 10, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing and there was no public testimony. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Campos, seconded by Council Member Reed, and carried unanimously, the recommendation of the Planning Director was approved, and Ordinance No. 27250: entitled: "An Ordinance of the City of San José Prezoning Certain Real Property Situated on the North Side of Madeline Drive, Approximately 200 Feet Easterly of White Road (3361 Madeline Drive), to R-1-8 Residence Zoning District", was passed for publication. (10-0-1. Absent: Gregory.)

- 11.9 Public Hearing on and consider approval of an ordinance on Conventional Rezoning of the property located at the south side of Story Road, approximately 200 feet westerly of Jackson Avenue (2278 Story Road), from CO Office Commercial Zoning District to CP Pedestrian Commercial Zoning District, to allow commercial uses on a 0.24 gross acre site. (Vong Zenh S, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. SNI: East Valley/680 Communities.**
C 04-058 - District 5

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File C04-0585, dated September 21, 2004, recommending approval on the Conventional Rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on September 10, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing and there was no public testimony. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Campos, seconded by Council Member Reed, and carried unanimously, the recommendation of the Planning Director was approved, and Ordinance No. 27251, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Story Road, Approximately 200 Feet Westerly of Jackson Avenue (2278 Story Road) to CP Commercial Pedestrian Zoning District", was passed for publication. (10-0-1. Absent: Gregory.)

GENERAL PLAN PUBLIC HEARINGS

12.1 Approval of General Plan Consent Calendar Items

Upon motion by Vice Mayor Dando, seconded by Council Member Campos and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Gregory.)

CONTINUATION OF SEPTEMBER 7, 2004 GENERAL PLAN HEARING

12.1 (a) Public Hearing on the following items located at the southwest corner of Jackson Avenue and McKee Road on a 34.2-acre site. (San Jose Health System, LP, Owner/Applicant).

- (1) PUBLIC HEARING ON GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram from Medium-High Density Residential (12-25 DU/AC) designation on 7.9 acres; Office on 4.9 acres, and Neighborhood/Community Commercial on 4.6 acres to Public/Quasi-Public.
GP03-05-10 - District 5**

Documents Filed: None.

Action: Dropped. Renote for December 7, 2004.

- (2) PUBLIC HEARING ON PLANNED DEVELOPMENT PREZONING from A Agriculture, CG Commercial General, CO Commercial Office, A (PD) Planned Development, R-2 Two Family Residence Districts to A (PD) Planned Development Zoning District to allow up to 1,030,000 square feet of medical office uses on a 34.2 gross site.
PDC03-093 - District 5**

Documents Filed: None.

Action: Dropped. Renote for December 7, 2004.

- (b) PUBLIC HEARING ON GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Light Industrial to Medium Density Residential (8-16 DU/AU) for property located on the southeast corner of Marburg Way and Highway 101 on a 3.24-acre site. (Borrelli Investment Company, Owner/Ray Hashimoto, Applicant). SNI: Five Wounds/ Brookwood Terrace.
GP03-03-16 - District 3**

Documents Filed: None.

Action: Dropped. Renote for December 7, 2004.

- 12.1 (c) **PUBLIC HEARING ON GENERAL PLAN TEXT AMENDMENT request to change the text of policies and Land Use/Transportation Diagram designation descriptions to facilitate the continuation and expansion of recycling uses on landfill sites after closure of landfills. CEQA: Mitigated Negative Declaration, GP04-T-01. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1; Dhillon Absent).**
GP04-T-01a - District Citywide

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File GP04-T-01a, dated September 8, 2004, recommending approval of the General Plan Text Amendment. (2) Memorandum from Planning Commission Secretary Stephen Haase, dated September 9, 2004, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on August 27, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing and there was no public testimony. Mayor Gonzales closed the Public Hearing.

Action: The Staff/Planning Commission recommendation was tentatively approved. (10-0-1. Absent: Gregory.)

- (d) **PUBLIC HEARING ON GENERAL PLAN TEXT AMENDMENT request to change the text of the Specific Land Use Plan for the Alviso Planned Community Land Use/Transportation Diagram designation description of Solid Waste Landfill Overlay to facilitate the continuation and expansion of recycling uses on landfill sites after closure of landfills. CEQA: Mitigated Negative Declaration, GP04-T-01. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1; Dhillon Absent).**
GP04-T-01b - District 4

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File GP04-T-01b, dated September 8, 2004, recommending approval of the General Plan Text Amendment. (2) Memorandum from Planning Commission Secretary Stephen Haase, dated September 9, 2004, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on August 27, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing and there was no public testimony. Mayor Gonzales closed the Public Hearing.

Action: Staff/Planning Commission recommendation was tentatively approved. (10-0-1. Absent: Gregory.)

- 12.2 (a) **PUBLIC HEARING ON GENERAL PLAN AMENDMENT** request to change the Land Use/Transportation Diagram designation from Medium Low Density Residential (8 DU/AC) on 1.6 acres and Medium High Density Residential (12-25 DU/AC) on approximately 4 acres to Medium Density Residential (8-16 DU/AC) on a 5.6-acre site. CEQA: Mitigated Negative Declaration, GP03-03-17. SNI: University. Director of Planning, Building and Code Enforcement recommends denial. Planning Commission recommends approval (5-1-1; Dhillon Opposed; Platten Absent).
GP03-03-17 - District 3
- (b) **PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING** from R-1-8 Residence Zoning District, CP Commercial Pedestrian Zoning District to A(PD) Planned Development Zoning District to allow up to 55 single-family detached residences on an 8.6-gross-acre site. CEQA: Mitigated Negative Declaration, PDC03-094. SNI: University. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval with no bollards at Orvis Street entrance and no vehicular circulation under the native Valley Oak tree. (5-1-1; James Opposed; Platten Absent).
PDC03-094 - District 3

Documents Filed: (1) Memorandum from Council Member Chavez, dated September 21, 2004, recommending approval of the proposed General Plan Amendment with conditions, as stated below in the "Motion". (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project Files GP03-03-17/PDC03-094, dated August 4, 2004, recommending approval of the General Amendment. (3) Memorandum from Planning Commission Secretary Stephen Haase, dated August 30, 2004, transmitting the Planning Commission recommendation. (4) Proof of Publication of Notice of Public Hearing, executed on July 30, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing. Paul Murphy expressed concerned with doubling the traffic, and limiting access for emergency vehicles. Mayor Gonzales closed the Public Hearing.

Motion: Council Member Chavez moved approval of the Staff/Planning Commission recommendation and her memorandum, which states: The proposed General Plan Amendment changing the land use/transportation diagram designation from Medium High Density Residential (12-25 du/acre) on approximately 4 acres to Medium Density Residential (8-16 du/acre) and maintain the current General Plan (GP) designation of 8 du/acre along Orvis Avenue, understanding that maintaining the Orvis Avenue GP designation does not impact the proposed project due to sections of Chapter V within the General Plan that allow housing density in projects with two land use designations to be "rearranged" over the site as the total number of units allowed in each designation is not exceeded; PDC 03-094 with the following amendments (in *italics*) to the conditions and direction to Staff:

12.2(a)(b) (Cont'd.)

Motion: (Cont'd.)

(2) *“A portion of the floodplain areas east of the grade change and outside the 100-foot riparian setback shall be used as common space for the subject development to meet the common open space requirement for the development...Should the proposed Zoning be approved, the applicant shall work with the appropriate City Staff and the community at the Planned Development Permit stage to develop a landscaping and low-intensity development plan for open space area that is appropriate for the site given the various constraints (i.e. flooding, easements, riparian considerations, security, access, etc.). The development plan should seek to increase security for the area, minimize traffic and parking demand upon Orvis Avenue, limit noise-generating activities, and insure long-term maintenance of the space.*

(5) The issue regarding vehicular access on the Orvis Avenue bulb should be addressed at the Planned Development Permit stage. *This is a Planning Development Permit level detail and should not be “zoned in” as that would require modifications to have City Council approval. Staff should work with the applicant to design a circulation plan that removes the internal street loop and allows for emergency vehicle access (EVA) only from Orvis Avenue; and,*

Direct the Applicant and Staff to meet with the community to review the Planned Development Permit and Construction Mitigation Plan at least 3 to 4 weeks prior to the Director's Hearing (yet to be scheduled). Council Member Yeager seconded the motion.

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Chavez, dated September 21, 2004, with amendments as stated previously, and the Staff/Planning Commission recommendation were tentatively approved, and Ordinance No. 27252, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at Southeast Corner of South 12th Street and Orvis Avenue and at the Northeast Corner of South 11th and East Virginia Street to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1. Absent: Gregory.)

**11.6 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning from R-1-8 Residence Zoning District, CP Commercial Pedestrian Zoning District to A(PD) Planned Development Zoning District to allow up to 53 single-family detached residences on an 8.6-gross-acre site, located at the southeast corner of South 12th Street and Orvis Avenue. (San Jose Bible College, Owner; KB Home South Bay, Inc., Developer). CEQA: Mitigated Negative Declaration.
PDC03-094 – District 3**

12.2(a)(b) and 11.6 (Cont'd.)

Action: Heard after Item 12.2(a). Action taken under Item 12.2(b).

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

- 4.4 (a) **Accept a progress report from the Coyote Valley Specific Plan Task Force on the “Composite Framework,” identifying potential infrastructure elements for a new Coyote Valley community.**
- (b) **Reaffirm Council’s direction on the preparation of the Coyote Valley Specific Plan as outlined in Council’s Vision and Expected Outcomes for Coyote Valley Specific Plan Task Force, originally considered by the Council on August 20, 2002.**

CEQA: Exempt, PP03-11-366. Council District 2. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Mayor Gonzales, and Council Member Williams, dated September 21, 2004, recommending as described above. (2) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated September 10, 2004, transmitting report. (3) Letter from Jim Cunneen, Silicon Valley Chamber of Commerce, dated September 21, 2004, expressing support for Coyote Valley. (4) “A Report Card on the Coyote Specific Plan Process”, from Greenbelt Alliance, dated September 2004. (5) Letter from Sierra Club, Loma Prieta Chapter, dated September 20, 2004, representing citizens opposed to the Coyote Valley Development. (6) Memorandum dated September 19, 2004, from a member of the public.

Deputy Director of Planning, Building, and Code Enforcement Laurel Prevetti presented an outline of the Composite Framework for the Coyote Valley Specific Plan.

Motion: Council Member Williams moved acceptance of the Progress Report and affirmation of Council’s direction on the preparation of the Coyote Valley Specific Plan as outlined in Council’s Vision and Expected Outcomes for Coyote Valley Specific Plan Task Force, originally considered by the Council on August 20, 2002. Council Member Chavez seconded the motion.

Public Comment: Dan Hancock, Coyote Housing Group, stated there has the public outreach has made great progress to date, and Jim Tucker, San José Silicon Valley Chamber of Commerce, spoke in favor of the development.

Mayor Dennis Kennedy, City of Morgan Hill, not opposed to development, but expressed concern regarding impacts on housing, traffic, schools, open space, and density. John Sobrato, Tim Steele, Sobrato Development Company, suggested decreasing the density by half.

Trixie Johnson, Friends of Coyote Valley Greenbelt, expressed concern that there is not a specific Green Belt plan. Kyle Simpson, Greenbelt Alliance, asked Staff to consider functionality.

4.4 (Cont'd.)

Roger Costa, Dan Carroll, Michael Biyi, Ken Saso, Liz Hirata, William Garbett, Jo K. Crosby, Consuelo Crosby, Wayland Tam, Eric Chan, Wing Mok, Samuel Kwong, Wai Fong Chan, Denise Glasco, Richard DeSmet, Lee Wieder, Donna Courtwright, Coyote Valley Alliance for Smart Planning, Joseph Louis, The Marchese Property, Beverly Bryant, Home Builders Association of Northern California, Wayne O'Connell, Chris Allen, and Doug McNea, spoke of concerns of the Coyote Valley development and not being included as part of the process.

Bob Wright, Monterey Mushrooms, expressed concern that the Green Belt property values will decrease, increasing traffic, and that the City is not addressing issues.

Marty Astrada, Jerry Amaro, Rebecca Nieves, Vince Strangis, Prince Daniels, Jackie Hua, Reverend Paul Quijada, Victory Outreach Church, expressed concern such as wanting to build on their property, and not being included in the outreach.

Discussion: Mayor Gonzales asked Staff to address the concerns of the members of Victory Outreach Church and the south Coyote Valley property owners. Deputy Director Prevetti explained that places of worship are identified and included in the plan, with details to follow by November 4, 2004.

Vice Mayor Dando asked Staff to find a way to include everyone in the audience tonight, as they have provided good feedback, by creating a task force. She added Staff must address the Green Belt property owners, and include them in the process. She requested that Staff identify land uses such as places of worship, retail, medical, residential, and commercial.

Council Member Chavez expressed concern with the financing infrastructure, and requested more information and the next steps regarding density, rental versus ownership, the issues surrounding open space and the Green Belt.

Council Member Cortese expressed concern about the agricultural component and what can be done to help these families hold on to their property and still farm it.

Council Member Campos stated it is important to continue to keep the community involved. Council Member Chirco asked for clarification of the high density projected for this area.

Action: On a call for the question, the motion carried unanimously and the Progress Report was accepted and Council's Direction was approved, the recommendation of Planning Commission and the Planning Director was approved, with additional direction to: (1) Identify land uses such as places of worship, retail, medical, residential, commercial, etc. (2) Continue to keep the community involved. (3) Clarify the high density projected for this area. (4) Return with a work plan addressing the issues surrounding financing, open space and to include the Green Belt property owners in the process. (10-0-1. Absent: Gregory.)

PUBLIC HEARINGS

11.2 Public Hearing on review and recommendation of the Update to City Council Policy 6-30, Public Outreach, and adoption of a related resolution amending the policy. CEQA: Not a Project. (Planning, Building, and Code Enforcement) Citywide

Documents Filed: (1) Memorandum from Planning Commission Secretary Stephen Haase, dated September 10, 2004, transmitting the recommendation of the Planning Commission. (2) Proofs of Publications of Notices of Public Hearing, executed on September 10, 20, and 21, 2004, submitted by the City Clerk. (3) Correspondence from Home Builders Association, dated

Director of Planning, Building and Code Enforcement Stephen Haase introduced Autumn Gutierrez and Rick DiNapoli. Autumn and Rick presented an outline of the Update to City Council Policy (6-30) Public Outreach.

Public Comment: Mayor Gonzales opened the Public Hearing. Beth Shafran, Musi, Philip Bump, South Bay Labor Council, Ed Rast, Harvey Darnell, North Willow Glen Neighborhood Association, Judy Purrington, Pat Sausedo, NAIOP, spoke in favor of the update to the Public Outreach Policy. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, the recommendation of Planning Commission and the Planning Director was approved, and Resolution No. 72326, entitled: "A Resolution of the Council of the City of San José Approving an Updated City Council Policy Number 6-30, Public Outreach Policy, for Pending Land Use Development Proposal", was adopted. Staff directed to: (1) Report back in one year regarding the progress/hardships with neighborhood outreach, including the use of language translation services. (2) Continue to involve neighborhood groups in outreach with current updated information, including the use of consistent plain speech for noticing in a recognized bold print, and standard envelope. (3) List land use issues by District on the City of San José's public web site. (10-0-1. Absent: Gregory.)

11.8 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located on the northeast corner of North First Street and East Gish Road (1410 North First Street), from CN Neighborhood Commercial Zoning District to A(PD) Planned Development Zoning District, to allow up to 35 affordable multi-family attached residences and 3,775 square feet for commercial use on a 0.42 gross acre site. (The Southland Corporation, Owner; 1st Community Housing, Jeff Oberdorfer, Developer). CEQA: Addendum to Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC 04-055 - District 3

11.8 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Chavez, dated September 21, 2004, recommending approval of the Planning Commission recommendation, with direction as described in "Action". (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File PDC04-055, dated September 1, 2004, recommending approval of the Planned Development Rezoning. (3) Memorandum from Planning Commission Secretary Stephen Haase, dated September 9, 2004, transmitting the Planning Commission recommendation. (4) Proofs of Publications of Notices of Public Hearings, executed on August 27, and September 5, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing. Joseph Fota, and Steve Gates, Rosemary Gardens, spoke in favor of the rezoning. Mark Ruffing spoke in support, but stated the busy intersection is a concern and asked how it can be mitigated. Arvind Shah, Menara Restaurant, expressed concern about the signage. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, Ordinance No. 27253, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of Gish Road and North First Street to A(PD) Planned Development Zoning District", was passed for publication, with the recognition of the following elements: (1) Accept and recognize the description of the operation of the commercial portions of the project for the retail spaces as proposed and planned by the applicant as part of the description to the applicant's ultimate project, including: (a) Alcohol sales will be limited to the hours of 6 a.m. to midnight; (b) Single bottles, malt liquors, and fortified wines will not be sold at the store. (c) Adult magazines will not be sold at the store; (d) Possible tenancy of the second retail space will not include bail bond operators or tattoo shops and will target neighborhood serving retailers. (2) Accept the applicant's offer to construct a gate to prevent trespassing of the area between the proposed development and adjacent restaurant. (3) Accept the applicant's offer to pursue placement of 3 signs at entrances to Rosemary Gardens Neighborhood identifying the streets as neighborhood serving, not through streets, all in a manner consistent with City standards and laws. (4) Staff was further directed to continue to work with the property owners. (10-0-1. Absent: Gregory.)

GENERAL PLAN

- 12.3 (a) **PUBLIC HEARING ON GENERAL PLAN AMENDMENT** request to change the Land Use/Transportation Diagram designation from Industrial Park to Medium High Density Residential (12-25 DU/AC) for property located on the southwest corner of Lundy Avenue and McKay Drive at (1240 and 1290 McKay Drive and 1750 Ringwood Avenue) on a 17.38-acre site. (Philips Semiconductors Inc., Sobrato Inc, Owners/The Riding Group, Applicant). CEQA: Resolution to be adopted, GP03-04-04. Director of Planning, Building and Code Enforcement recommends denial and Planning Commission forwards negative recommendation (3-2-1-1; Zito & Dhillon Opposed; Platten Absent; Levy Abstained).
GP03-04-04 - District 4
- (b) **PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING** from IP Industrial Park Zoning District to A(PD) Planned Development Zoning District to allow up to 304 single-family attached residences. CEQA: Resolution to be adopted, PDC04-001. Director of Planning, Building and Code Enforcement recommends conditional approval and Planning Commission recommends approval (5-0-1-1; Platten Absent; Levy Abstained).
PDC04-001 - District 4

Documents Filed: (1) Memorandum from Mayor Gonzales, and Council Member Reed, dated September 15, 2004, recommending approval of the General Plan Amendment, and approval of construction as proposed by the applicant. (2) Memorandum from Planning Commission Secretary Stephen Haase, dated August 30, 2004, transmitting the Planning Commission recommendation, and the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File PDC04-005, dated August 6, 2004, recommending approval of the General Plan Amendment, and the Planned Development Rezoning. (3) Supplemental memorandum from Planning Commission Secretary Stephen Haase, dated September 14, 2004, transmitting a correction in reference to the Industrial Conversion Framework. (4) Proof of Publication of Notice of Public Hearing, executed on July 28, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing. Ken Riding, The Riding Group, and Applicant, spoke in favor of the amendment. Mayor Gonzales closed the Public Hearing.

12.3(a)(b) & 11.5

Motion: Council Member Reed moved approval of the memorandum he cosigned with Mayor Gonzales, dated September 15, 2004, and read into the record, “The Council of the City of San José adopts and makes the following Statement of Overriding Considerations regarding the significant, unavoidable impacts of the Project and the anticipated benefits of the Project. With respect to the foregoing findings and in recognition of those facts that are included, as disclosed in the FEIR prepared for this Project, the City has determined that the Project will result in significant unmitigated impacts to land use, air quality, and cumulative impacts to air quality, and public services and facilities. Moreover, approval of all pending General Plan amendments would result in a worsening of the jobs/housing balance and have a cumulative impact on public services and facilities. The impacts would not be reduced to less than significant levels by feasible changes or alterations to the Project. Findings that each of the benefits set forth constitute the overriding considerations and each constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project”. Vice Mayor Dando seconded the motion.

Action: On a call for the question, the motion carried unanimously, and carried unanimously, CEQA Resolution No. 72327, entitled: “A Resolution of the Council of the City of San José Making Certain Findings Concerning Significant Effects, Mitigation Measures, and Alternatives for Lundy Avenue/McKay Drive Residential General Plan Amendment and Planning Development (PD) Rezoning Project for which an Environmental Impact Report was Prepared in Accordance with the California Environmental Quality Act”; and Ordinance No. 27254, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Lundy Avenue and McKay Drive (1240 McKay Drive), to A(PD) Planned Development Zoning District”, were adopted. (10-0-1. Absent: Gregory.)

- 11.5 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located at the southwest corner of Lundy Avenue and McKay Drive (1240 McKay Drive), from IP Industrial Park Zoning District to A(PD) Planned Development Zoning District, to allow up to 313 single-family attached residences on a 17.38 gross acre site. (Sobrato Sobrato Interests, Owner; The Riding Group, Kendall Riding, Developer). CEQA: Pending.
PDC 04-001 - District 4**

Action: Heard after Item 12.3(a). Action taken under Item 12.3(b).

- 12.4 Adoption of a resolution approving all General Plan amendment actions taken on September 7 and September 21, 2004. (Planning, Building and Code Enforcement)**

Documents Filed: None.

12.4 (Cont'd.)

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, Resolution No. 72328, entitled: "A Resolution of the Council of the City of San José Adopting, Pursuant to Title 18 of the San José Municipal Code, Amendments to the San José 2020 General Plan, San José, California", was adopted. (10-0-1. Absent: Gregory.)

OPEN FORUM

- (1) Linda Combs spoke of issues related to the Fairgrounds.

ADJOURNMENT

The Council of the City of San José was adjourned at 10:24 p.m.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, CMC, CITY CLERK

smd/9/21/04min